



STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF A FILING BY)
CONVERSENT COMMUNICATIONS OF)
NEW JERSEY, LLC REQUESTING)
APPROVAL OF ITS B.P.U.-N.J. - NO. 1)
TARIFF TO PROVIDE LOCAL EXCHANGE)
SERVICES WITHIN THE STATE OF NEW)
JERSEY)

ORDER OF APPROVAL

DOCKET NO. TT00110854

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated October 31, 2000, Conversent Communications of New Jersey, LLC (Conversent or Petitioner) filed its proposed tariff, B.P.U.-N.J. - No. 1, with the Board of Public Utilities (Board) to offer local exchange telecommunications services in New Jersey. With this filing, Conversent seeks approval of its tariff to provide local exchange telecommunications services throughout the State of New Jersey. On April 9, 2001, Conversent submitted revisions to the tariff.

Conversent was previously authorized to provide local exchange and interexchange telecommunications services by the Board. See Order of Approval, I/M/O the Petition for an Order Authorizing Conversent Communications of New Jersey, LLC to Provide Local Exchange and Interexchange Telecommunications Services, BPU Docket No. TE00020073 (September 12, 2000). Conversent also has an approved interconnection agreement. See Order Approving Interconnection Agreement, I/M/O the Joint Application of Bell Atlantic-New Jersey, Inc. for Approval of an Interconnection Agreement under Section 252 of the Telecommunications Act of 1996, BPU Docket No. TO00020127. The tariff sought herein will allow Conversent to provide local exchange services to business customers in New Jersey, affording them additional choice in their selection of available local exchange companies.

DISCUSSION

When the Board authorized Conversent to provide local exchange services, Conversent essentially became a local exchange telecommunications company¹ with regard to its local exchange services. N.J.S.A. 48:2-21.17. The local exchange services for which Conversent seeks approval are subject to Title 48, and specifically, to the Telecommunications Act of 1992, N.J.S.A. 48:2-21.16 et seq (the 1992 Act).

¹ A local exchange telecommunications company is defined to mean "a carrier authorized by the [B]oard to provide local telecommunications services." N.J.S.A. 48:2-21.17.

Thus, Conversent's local exchange services, which are asserted to be competitive according to the 1992 Act or a Board decision pursuant thereto need only be reviewed by the Board to confirm that, in fact, they are competitive.² Once determined to be competitive, such services are not subject to regulation by the Board as to their rates, tolls, charges, rate structures, terms and conditions of service, rate base, rate of return and cost of service. N.J.S.A. 48:2-21.19(a). However, the Board may require a local exchange or interexchange company to file and maintain tariffs for such competitive services. Ibid.

With regard to the services that are reflected in Conversent's tariff, the Board FINDS the following services to be competitive because they are identical to or essentially the same as services already deemed competitive, either prior to the 1992 Act, in which case they are competitive by definition pursuant to N.J.S.A. 48:2-21.17, or by Board Order pursuant to N.J.S.A. 48:2-21.19. Conversent's NetServe Centrex Service is the same as VNJ's Centrex service, which was approved as a Group I competitive service in 1987. See Order, I/M/O the Petition of New Jersey Bell Telephone Company for Approval of a Proposal for a Rate Stability Plan and Relaxed Earnings Surveillance for Certain Competitive Services, Docket No. TO8705398 (June 22, 1987) (hereinafter, Rate Stability Plan Order) at 4. Conversent's NetFlex T-1 Service with DID and Integrated T-1 Service are the same as VNJ's High Capacity Service, which was approved as a Group I Service in 1987. Id. at 4. Conversent's Directory Assistance Service is identical to VNJ's Directory Assistance Service, which was reclassified as a competitive service on August 31, 1999. See Order of Approval, I/M/O Filing by Bell Atlantic-New Jersey, Inc. for the Reclassification of Existing Rate Regulated Services-Directory Assistance Services as Competitive Services, Docket No. TT97120889 (September 4, 1999). Conversent's Travel Card Service is essentially the same as the VNJ's Phone Card approved as a competitive service in 1995. See Interim Order of Approval, I/M/O Filing by Bell Atlantic-New Jersey, Inc. of a Revision of Tariff B.P.U. -N.J. - No. 2 Providing for the Introduction of the Bell Atlantic Phone Card, Docket No. TT94120613 (February 22, 1995). Conversent's Toll Message Service is the same as VNJ's IntraLATA Toll Service, which was deemed competitive effective May 5, 1997. See Decision and Order, I/M/O the Investigation of IntraLATA Toll Competition for Telecommunications Services on a Presubscription Basis, Docket No. TX94090388 (May 28, 1997); N.J.A.C. 14:10-10.6. Conversent's Wide Area Telecommunications Service is identical to VNJ's Wide Area Telecommunications Service, which was deemed competitive on July 1, 1994 when the Board approved a settlement, which provided for Access Code Call competition for intraLATA toll service. See Order Approving Settlement, I/M/O Petition of Sprint, MCI and AT&T for Authorization of IntraLATA Compensation, Docket Nos. TX90050349, TE92111047 and TE93060211 (July 1, 1994).

With regard to all other local exchange services for which Conversent seeks Board approval, the Board notes that such services are going to be offered for the first time by Conversent and that these new offerings are not presently covered by any existing rates, fares or charges. When the Board is prescribing rates in such situations, it is not required to find a rate base. N.J.S.A. 48:2-21.2(1)(c). These non-competitive services are: NetServe Business Line, NetServe Measured Business Exchange Services, NetServe Private Branch Exchange (PBX) Trunk Services, NetServe Primary Rate Interface (PRI) Operator Services, Busy Line Verification, Busy Line Interrupt Service, Directory Listing, Access Service and Service Connection. In addition, Conversent is offering competitive and non-competitive Service Packages (Business Line Value Package, Business Line Security Package, Business Line

² The term competitive service is defined to mean "any telecommunications service determined by the [B]oard to be competitive prior to the effective date of [the 1992 Act] or determined to be competitive pursuant to sections 4 or 5 of [the 1992 Act], or any telecommunications service not regulated by the Board." N.J.S.A. 48:2-21.17.

Security Package Plus, PBX Trunk Security Package Plus, PBX Security Package Plus, Centrex Value Package and Centrex Bundle) and Miscellaneous Services (Vanity Numbers, Presubscription and Individual Case Basis) to fit individual customer specific communications needs.

In this petition, Conversent seeks to enter the local exchange marketplace, which is now dominated by the incumbent local exchange carrier (ILEC), VNJ. While the Board is not now making a determination that the local exchange market in New Jersey is fully competitive, the Board is convinced that it is in the public interest to encourage entry by competitors in order to increase the number of market choices available to New Jersey consumers, and to encourage the transition of this market to one which is fully competitive. This view is fully in keeping with the New Jersey Legislature's finding that competition will promote efficiency, reduce regulatory delay and foster productivity and innovation. N.J.S.A. 48:2-21.16(b)(1). This view is also consistent with that of Congress, which passed the Telecommunications Act of 1996 (codified in scattered sections of 47 U.S.C. §151 et seq.) (the 1996 Act), in order to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of those telecommunications technologies. See P.L. 104-104, 110 Stat. 56. Among the measures, which Congress incorporated into the 1996 Act to promote competition, is the provision which forbids the states from erecting barriers to entry into any intrastate telecommunications marketplace. Specifically, 47 U.S.C. §253(a) provides that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

Moreover, should a state or local government statute, regulation or legal requirement be determined by the Federal Communications Commission (FCC) to violate the 1996 Act's prohibition against barriers to entry, the FCC is empowered to preempt the enforcement of such state statute, regulation or legal requirement. 47 U.S.C. §253(d). Not only is the application of a rate base/rate of return review of this filing not required by N.J.S.A. 48:2-21.2, but such a review, and indeed, any requirement for a detailed cost justification of the rates proposed by Conversent in this filing could be perceived as the imposition of a barrier to entry. Certainly, in a local exchange marketplace environment in which Conversent has virtually no customers, and any customers which it may successfully attract may easily obtain local exchange service again from the incumbent local exchange carrier, a detailed cost justification of Conversent's local exchange service rates is not justified.

Any carrier seeking to challenge the ILEC will have to compete on several levels to attract and retain customers. With regard to price competition, the Board notes that Conversent will offer its services at rates, which it believes are competitive. These proposed rates cannot be considered unreasonable considering the competitive posture in which Conversent finds itself, and the pro-competitive policies of both federal and State law.

Therefore, after thorough review of the proposed tariffs, the Board FINDS that, as amended, Conversent's tariff B.P.U.-N.J. - No.1 is reasonable and in accordance with law. The general terms and conditions of the proposed tariff have been reviewed by Staff, and have been modified by Conversent to bring them into conformance with the Board's customer service regulations. Accordingly, for the reasons set forth above, the Board HEREBY APPROVES in full the proposed B.P.U.-N.J. - No.1 tariff, as modified, to be effective as of the date of this Order.

DATED: 6/22/01

BOARD OF PUBLIC UTILITIES
BY:

(signed)
CAROL J. MURPHY
ACTING PRESIDENT

(signed)
FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

(signed)
FRANCES L. SMITH
SECRETARY